

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 249 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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DIPAKKUMAR VANMALIDAS

Versus

MANJULABEN DIPAKKUMAR

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Appearance:

MR MEHUL SHAH for Petitioner

MS SEJAL K MANDAVIA for Respondent No. 1

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 06/04/98

ORAL JUDGEMENT

Heard learned counsel for the parties.

Rule. Ms. Sejal Mandavia waives service of rule on behalf of respondent.

By the impugned order dated 20th January, 1998 the Civil Judge (S.D.), Junagadh below Ex.7 in Hindu Marriage Petition No.39 of 1995 has awarded interim

alimony under section 24 of the Hindu Marriage Act to the respondent-wife at the rate of Rs.800/- p.m. and Rs.800/- to each of two sons, in total Rs.2400/- p.m. from the date of filing of the divorce petition. The court has also awarded Rs.2000/- against the costs of litigation.

Mr. Mehul Shah appearing for the petitioner submits that the learned Judge has committed error of jurisdiction in awarding the interim alimony to the two children inasmuch as there is no provision under section 24 of the Hindu Marriage Act to award the maintenance to the children. He further submits that the provision for awarding the maintenance to the children is under section 26 of the Act which provides for the maintenance of the minor children. It is also submitted that the two sons namely Jasmin is of 21 years of age and Vimal of 18 years of age and therefore they are not minor.

Ms. Mandavia appearing for the respondent submits that no material has been produced by the respondent to show that the sons are minor.

It is true that section 24 of the Hindu Marriage Act does not provide for separate interim alimony for the children. However, the interim alimony includes the expenses to be incurred on the children by the mother. At this stage, it is stated by Mr. Mehul Shah that the sons are living with the husband-petitioner. Such a stand has been taken first time before this Court. Ms. Mandavia says that the children are living with the mother. Since respondent-Manjulaben has to maintain the two children, the impugned order can be modified by enhancing the maintenance awarded to her to Rs.2400/- by merging the interim alimony awarded in the name of two children.

It is next submitted that the learned Judge has committed error in awarding the interim alimony from the date of filing of the petition. There is substance in the contention of the petitioner. The interim alimony cannot be granted prior to the date of filing of the application for interim alimony under section 24 of the Hindu Marriage Act.

In view of the aforesaid, this revision application is allowed and the order of the learned Civil Judge (S.D.), Junagadh dated 20th January, 1998 is substituted as follows:

The respondent-Manjulaben is awarded

interim alimony from the date of her appearance in Marriage Petition No.39 of 1995 pending in the Court of Civil Judge, (S.D.), Junagadh at the rate of Rs.2400/- p.m.. The respondent shall be entitled to Rs.2000/- against the costs of litigation.

Rule is made absolute to the aforesaid extent.

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zgs/-